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12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 DAMIEN JOSEPH LEFORBES,

19 Defendant.
20
21
22

Case No. 2:24-CR-515-MRA

GOVERNMENT'S APPLICATION FOR
PRELIMINARY ORDER OF FORFEITURE

*[Proposed] Preliminary Order Of
Forfeiture Lodged Under Separate
Cover*

[No Hearing Requested]

23
24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 Plaintiff United States of America, by and through its counsel
26 of record, the United States Attorney for the Central District of
27 California and Assistant United States Attorney Alexander Su, hereby
28 applies for issuance of a Preliminary Order of Forfeiture pursuant

to Federal Rule of Criminal Procedure 32.2(b) as to the following property:

- i. 11.88710846 Bitcoin;
- ii. 36,112.279938902166177565 Chainlink;
- iii. 0.18644638 Ethereum;
- iv. 0.12401 USD Coin; and
- v. 322.13653 Tether.

This application, which deals solely with the specific property as to which forfeiture is sought (described in detail above), is supported by defendant's guilty plea and the matters set forth in the accompanying Memorandum of Points and Authorities.

DATED: January 17, 2025

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 17, 2024, defendant DAMIEN JOSEPH LEFORBES entered a plea of guilty to counts 1 and 2 of the Information (Dkt. 1), which charged defendant with violating 18 U.S.C. § 1955 (operating an illegal gambling business) and 18 U.S.C. § 1957 (transactional money laundering). Dkt. 16. Pursuant to the Forfeiture Allegations of the Information and Federal Rule of Criminal Procedure 32.2(b), the government now applies for the entry of a Preliminary Order of Forfeiture of the following property:

- i. 11.88710846 Bitcoin;
- ii. 36,112.279938902166177565 Chainlink;
- iii. 0.18644638 Ethereum;
- iv. 0.12401 USD Coin; and
- v. 322.13653 Tether (collectively, "Forfeitable Property").

A proposed order is lodged contemporaneously herewith. The government also requests that the forfeiture of the Forfeitable Property be stated orally at defendant's sentencing and set forth in defendant's Judgment and Commitment Order.

II. ARGUMENT

A. The Nexus Between Defendant's Crimes and the Forfeitable Property Has Been Established by the Defendant's Guilty Plea

As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in an indictment or information with regard to which criminal forfeiture is sought, the court must determine whether the government has established the requisite nexus between the property and the

1 offense. Fed. R. Crim. P. 32.2(b)(1). The Advisory Committee Notes
2 for this provision explain that for the preliminary order of
3 forfeiture, the court must determine "if the property was subject to
4 forfeiture in accordance with the applicable statute, e.g., whether
5 the property represented proceeds of the offense, was used to
6 facilitate the offense, or was involved in the offense in some other
7 way." Advisory Committee Notes to Rule 32.2, subdivision (b) (2000
8 Adoption). The standard of proof regarding the forfeitability of
9 property in a criminal case is preponderance of the evidence. See
10 United States v. Najjar, 300 F.3d 466, 485-86 (4th Cir. 2002);
11 United States v. Shryock, 342 F.3d 948, 991 (9th Cir. 2003)
12 (following Najjar); United States v. DeFries, 129 F.3d 1293, 1312
13 (D.C. Cir. 1997); United States v. Hernandez-Escarsega, 886 F.2d
14 1560, 1576-77 (9th Cir. 1989) (interpreting language in 21 U.S.C. §
15 853); United States v. Bieri, 21 F.3d 819 (8th Cir. 1994) (§ 853).

16 Thus, the only question before the Court in connection with the
17 requested entry of the proposed Preliminary Order is whether the
18 evidence before the Court is enough to establish by a preponderance
19 of the evidence that there is a nexus between the specific property
20 to be forfeited, and the offense to which defendant pled guilty. See
21 Fed. R. Crim. P. 32.2(b)(1).

22 The existence or extent of third-party interests in the
23 specific property will be determined after the entry of the
24 preliminary order. See United States v. Lazarenko, 476
25 F.3d 642, 648 (9th Cir. 2007) ("Upon a finding that the property
26 involved is subject to forfeiture, a court must promptly enter a
27 preliminary order of forfeiture without regard to a third party's
28 interests in the property."). The preliminary order should be

1 entered promptly in order to avoid unnecessary delay in the
2 forfeiture process and resolve potential third-party rights. United
3 States v. Yeje-Cabrera, 430 F.3d 1, 15 (1st Cir. 2005). The
4 defendant need not be present when the preliminary order is entered.
5 United States v. Segal, 495 F.3d 826, 837-38 (7th Cir. 2007).

6 The government is not required to establish the defendant's
7 ownership of the property either to seize it or to obtain a
8 preliminary order of forfeiture, and third parties are prohibited
9 from intervening in the criminal case and cannot complain that they
10 have to wait for the ancillary proceeding to assert their rights.
11 Almeida v. United States, 459 F.3d 377, 381 (2d Cir. 2006); 18
12 U.S.C. § 1963(i). As explained in the Advisory Committee Notes to
13 Rule 32.2 (2000), the Rule was revised with the intent to eliminate
14 confusion over whether the extent of the defendant's ownership
15 interest should be determined by the finder of fact. The new rule
16 clarified that the only question upon conviction or a guilty plea is
17 whether there is a nexus between the violation of which the
18 defendant has been convicted (or to which he has pled) and the
19 property sought - if there is, the court should enter an order
20 forfeiting "whatever interest a defendant may have in the property
21 without having to determine exactly what that interest is." A
22 defendant cannot object to the entry of a preliminary order on the
23 ground that the property at issue does not belong to him. United
24 States v. Schlesinger, 396 F. Supp. 2d 267, 273 (E.D.N.Y. 2005).

25 Here, all the proof that is necessary is contained in the Plea
26 Agreement, whereby defendant admitted that the Forfeitable Property
27 was subject to forfeiture as property representing proceeds of the
28 offenses; property used to facilitate the offense, and/or property

1 involved in the offense in some other way regarding the crimes to
2 which he pled guilty, namely operating an unlawful gambling
3 business, in violation of 18 U.S.C. § 1955, and transactional money
4 laundering, in violation of 18 U.S.C. § 1957.

5 Therefore, the requirements of Rule 32.2(b) have been met and
6 the proposed Preliminary Order should be entered.

7 **B. The Mechanics of the Criminal Forfeiture**

8 The Preliminary Order of Forfeiture becomes final as to the
9 defendant at the time of sentencing (or before sentencing, if
10 defendant consents). Fed. R. Crim. P. 32.2(b)(3). After entry of the
11 preliminary order, the second phase of the forfeiture proceedings
12 may begin, to determine whether any third-party rights may exist in
13 the specific property to be forfeited. Fed. R. Crim. P. 32.2(c)(1).

14 Accordingly, the government respectfully requests that the
15 Court enter the proposed Preliminary Order of Forfeiture lodged
16 contemporaneously herewith, authorizing the government to seize the
17 property subject to forfeiture (to the extent it has not
18 already done so) and to commence proceedings governing third-party
19 rights. Fed. R. Crim. P. 32.2(b)(3). Following the Court's
20 disposition of any third-party interests, or the expiration of the
21 period provided in 21 U.S.C. § 853(n)(2) for the filing of third-
22 party petitions, the government shall have clear title to the
23 Forfeitable Property.

24 **III. FORFEITURE MUST BE PRONOUNCED AT SENTENCING**

25 The Court must pronounce the forfeiture conditions orally as
26 part of the sentence imposed on the defendant and must include the
27 forfeiture in the judgment and commitment order. Fed. R. Crim. P.
28 32.2(b)(4). The government recommends the following language be read

1 to the defendant and modified as necessary for inclusion in the
2 judgment and commitment order at the time of his sentencing:

3 Pursuant to 18 U.S.C. §§ 1955(d), 982, and 28 U.S.C.
4 § 2461(c), as well as the Information, defendant
5 DAMIEN JOSEPH LEFORBES has forfeited all of his
6 right, title, and interest in the specific property
7 more particularly described in the Preliminary Order
8 of Forfeiture entered on [date].

9 **IV. CONCLUSION**

10 For the foregoing reasons, the government respectfully requests
11 that the Court forthwith enter the proposed Preliminary Order of
12 Forfeiture lodged herewith.

13 DATED: January 17, 2025

Respectfully submitted,

14 E. MARTIN ESTRADA
15 United States Attorney

16 LINDSEY GREER DOTSON
17 Assistant United States Attorney
Chief, Criminal Division

18 JONATHAN GALATZAN
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23 /s/Alexander Su
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